

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESAL PRICE
LITIGATION

MDL No. 1456
Master File No. 1:01-CV-12257-PBS
Sub-Category Case No. 1:08-CV-11200

THIS DOCUMENT RELATES TO:
*United States ex rel. Linnette Sun and Greg
Hamilton, Relators*
v.
*Baxter Hemoglobin Therapeutics and Baxter
International Inc.*

Judge Patti B. Saris

**BAXTER INTERNATIONAL INC.'S MOTION
TO DISMISS RELATORS' COMPLAINT**

Pursuant to Federal Rules of Civil Procedure 12(b)(1), and 12(b)(6), defendant Baxter International Inc. ("Baxter"), by and through its attorneys, respectfully requests that the Court dismiss with prejudice Counts I-III and VII-XXI of Relators' June 14, 2005 Amended Complaint for Damages Under the Federal and Various State False Claims Acts for the reasons set forth in the attached Memorandum in Support of Baxter International Inc.'s Motion to Dismiss Relators' Complaint.

Additionally, Baxter respectfully requests that the Court remand to the District of Colorado the claims for Retaliation in Violation of 31 U.S.C. § 3730(h) (Count IV), Retaliation in Violation of California Government Code § 12653 (Count V), Retaliation in Violation of California Public Policy (Count VI), Discrimination Under the California Fair Employment and Housing Act (Count XXII), and Harassment Under the California Fair Employment Housing Act (Count XXIII).

A proposed order is attached for the Court's convenience.

Respectfully submitted,

Dated: August 14, 2009

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CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(2)

I certify that the moving party has communicated with counsel for Relators in an effort to resolve the dispute referred to in this Motion, and that the parties have not been able to reach agreement with respect thereto.

/s/ Ruchi Jain

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CERTIFICATE OF SERVICE

I hereby certify that I, Ruchi Jain, an attorney, electronically filed the foregoing BAXTER INTERNATIONAL INC.'S MOTION TO DISMISS RELATORS' COMPLAINT with the Clerk of the Court for the District of Massachusetts using the Court's CM/ECF system on August 14, 2009. I also caused a true and correct copy of the foregoing document to be delivered to all counsel of record by electronic service via LexisNexis File & Serve, for posting and notification to all parties. In addition, the individuals listed below were served a courtesy copy via U.S. Mail.

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